

ATTACHMENT B



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

DA 97-2208

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Released: October 15, 1997

RULES ADOPTED IN THE REFORMING *SECOND REPORT AND ORDER* (PR DOCKET NO. 92-235) TO GO INTO EFFECT OCTOBER 17, 1997

On February 20, 1997, the Commission adopted the *Second Report and Order (Second R&O)* in PR Docket No. 92-235. By this action, the Commission consolidated the twenty Private Land Mobile Radio Services into two broad pools - Public Safety and Industrial/Business. Additionally, the *Second R&O* introduced competition into frequency coordination services and created opportunities for implementing centralized trunking technology on channels in the shared frequency bands below 800 MHz. The Commission made these rule changes effective six months after their publication in the Federal Register, which occurred on April 17, 1997.¹ Thus, these new rules become effective on October 17, 1997.

While these rules will become effective on October 17, 1997, we note the continued pendency of certain related matters. First, the Commission has received sixteen petitions for reconsideration of the *Second R&O* that challenge certain decisions regarding eligibility criteria for the two pools, the frequency coordination process, and the trunking rules. We take this opportunity to advise the public that licensing actions taken pursuant to these new rules will be subject to any relevant changes adopted by the Commission in its disposition of the pending reconsideration petitions. Second, on August 5, 1997, the Balanced Budget Act of 1997 (1997 Budget Act)² was signed into law. Sections 3002 and 3004 of the statute redefine "public safety" for certain purposes and expand the Commission's competitive bidding authority to apply to assignment of mutually exclusive applications in private wireless services.³ While these provisions do not directly affect the rules scheduled to go into effect on October 17, 1997, they may bear on future consideration of these and related rules.

Notwithstanding the outstanding issues on reconsideration and the implementation of the provisions of the new statute, at this time the public interest would be best served by permitting the new rules to take effect on the scheduled date. These rules are designed to provide for a more efficient distribution of channels, permit licensees to better utilize technologically innovative and efficient equipment, and reduce costs and administrative burdens. Given these significant benefits, further delay is unwarranted.

By the Chief, Wireless Telecommunications Bureau.

Wireless Telecommunications Bureau contact: Ira Keltz at (202) 418-0680 or by E-Mail at mayday@fcc.gov.

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¹ The summary of the *Second R&O*, including the new rules, was published in the Federal Register on April 17, 1997. See 62 FR 18834 (April 17, 1997).

² See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

³ See *id.* at §§ 3002, 3004, 111 Stat. at 258, 266.

DRAFT

**AAA NORTH JERSEY
418 Hamburg Turnpike
Wayne, NJ 07474-7245**

August 27, 1998

Mary Shultz, Chief
Licensing and Technical Analysis Branch
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

**RE: Vogel Bus Company, Inc.
Application for 150.935 MHz/158.160 MHz
Call Sign: WPMJ727
Attention: MMS**

PETITION FOR RECONSIDERATION

Dear Ms. Shultz:

AAA North Jersey hereby requests, pursuant to Section 1.106 of the Commission's rules, reconsideration of the August 14, 1998 decision to assign Vogel Bus Company, Inc. (Vogel Bus Company) the frequency pair 150.935 MHz/158.160 MHz (Call Sign WPMJ727), because AAA North Jersey already utilizes the frequency 150.935 MHz to respond to frequent and critical emergency road service calls from the public as well as public safety agencies. As demonstrated below, the licensing of this frequency pair is adverse to the public interest, and inconsistent with Congress' recognition of the "quasi-public safety" status of automobile emergency radio operations.

AAA North Jersey is a not-for-profit organization responsible for providing emergency road services to

approximately 1.6 million members in Hudson, Bergen, and Passaic Counties, in the northern portion of New Jersey. AAA North Jersey is currently licensed to operate on the channel 150.935 MHz, under Call Sign KEH228. On August 14, 1998, based on a recommendation by the Personal Communications Industry Association (PCIA), the Commission assigned this channel to Vogel Bus Company. As shown in Attachment A hereto, Vogel Bus Company's signal will overlap a substantial portion of AAA North Jersey's service area on the same frequency.

As demonstrated below, the licensing of Vogel Bus Company on the frequency pair 150.935 MHz/158.160 MHz is not in the public interest because it: (1) creates the problem of frequency congestion which raises public safety concerns; (2) poses the risk that Vogel Bus Company will fail to adequately monitor the frequency 150.935 MHz for communications in progress, as required by Section 90.403(e) of the Commission's rules, and prevent AAA North Jersey from using the channel for its simplex operations, and (3) presents the prospect that a regulatory scheme will be implemented which conflicts with Congressional intent.

I. *Licensing the frequency 150.935 MHz to Vogel Bus Company raises serious safety concerns*

AAA North Jersey has been providing emergency road services for approximately 98 years. It is evident, based on the number of emergency calls received by AAA North Jersey, that the public has come to rely on these services. AAA North Jersey responds to approximately 700 emergency calls per day from motorists experiencing a wide variety of problems, many of which endanger

the safety of drivers and passengers. Between October and March, when inclement weather creates additional road hazards, AAA North Jersey responds to approximately 1,000-1,500 calls a day. Such situations require immediate attention. For example, AAA North Jersey often assists motorists who have been stranded on the road where they are vulnerable to harm from high-speed vehicles, adverse weather conditions, or crime.

State and local public safety agencies have also come to rely on the public safety services performed by AAA North Jersey. Police departments and 911 operators regularly call AAA North Jersey for assistance in handling roadway accidents, or natural disasters, because they know that AAA North Jersey has the equipment, expertise and most importantly, the ability to respond quickly in these situations. In the absence of a prompt response by AAA North Jersey, these government agencies will be compelled to devote their own resources to clearing such hazards.

Indeed, this ability to respond immediately in urgent situations is the key to providing reliable automobile emergency road services. For this reason, it is essential that 150.935 MHz remains useable for AAA's present operations. This frequency is already congested, particularly during the morning and evening rush hours when traffic accidents commonly occur, and AAA North Jersey is called into action. Typically, AAA's tow truck operators use the channel 45 minutes out of the hour during rush hour, or during extended storm periods. If Vogel Bus Company is allowed to use the same frequency, it is foreseeable that

important automobile emergency calls may not get through in time, which could threaten the safety of the motorists involved, and contribute to substantial traffic delays.

Indeed, approximately one month ago, AAA North Jersey began experiencing severe interference caused by another entity operating on 150.935 MHz without any apparent effort to monitor before broadcasting. Due to this interference, AAA North Jersey has not been able to use the channel. AAA North Jersey does not know whether this entity is Vogel Bus Company or another user, since the interfering operation is broadcasting in a foreign language and does not periodically identify its call sign as required by the Commission's rules. AAA North Jersey is separately seeking relief from this interference through a complaint to the Commission's Field Office Bureau.

II. The use of a duplex system on these frequencies increases the risk of interference

The licensing of a frequency pair (150.935 MHz and 158.160 MHz) to support Vogel Bus Company's duplex mode of operation exacerbates this interference problem. It is foreseeable that Vogel Bus Company will fail to adequately monitor the transmitting frequency (150.935 MHz) for communications in progress, as required by Section 90.403(e) of the Commission's rules, and thus prevent AAA North Jersey from using this channel for its simplex operations. AAA North Jersey, like most auto clubs, has invested in a simplex system because the frequencies assigned to Automobile Emergency Radio Service (AERS) were allocated on an unpaired basis. The Commission has recognized

that the licensing of channel pairs for duplex operations on frequencies that also support simplex operations requires special consideration, and has stated that "it may be necessary for licensees of two-frequency duplex systems to install additional equipment to ensure compliance with the requirement to monitor a base station frequency prior to transmitting." Amendment of Part 90 of the Commission's Rules to Permit Business Radio Use of Certain Channels in the 150 MHz Band, *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 88-373, 5 FCC Rcd 4784, note 51 (1990). In the absence of the installation of special equipment, Vogel Bus Company's duplex operation will likely be configured such that it monitors only the paired mobile frequency (158.160 MHz) for traffic, and therefore will not detect auto club communications prior to broadcasting on 150.935 MHz. To ensure that there is sufficient air time available to AAA North Jersey, and to ensure compliance with Section 90.403(e), the Commission should grant Vogel Bus Company a license on a more suitable frequency.

III. *The proposed license is inconsistent
 with Congress' recognition of the
 importance of auto emergency services*

The licensing of Vogel Bus Company on the 150.935 MHz frequency is inconsistent with Congress' recognition of AAA and its auto clubs protection as quasi-public safety entities. In the Conference Report accompanying the Balanced Budget Act of 1997, Congress explicitly recognized the important public safety role played by AAA auto clubs, noting that "the services offered

by these entities protect the safety of life, health, or property and are not made commercially available to the public." H.R. Rep. No. 105-217, at 572 (1997). To ensure that auto clubs can continue to provide emergency road services to the public, Congress expressly exempted from the FCC's auction authority all licenses issued "for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations." Budget Act, Sec. 3002(a)(2)(A). Congress explained in the Conference Report that "[t]his service exemption also includes radio services used by not-for-profit organizations that offer emergency road services, such as the American Automobile Association. The Senate included this particular exemption in recognition of the valuable public safety service provided by emergency road services." H.R. Rep. No. 105-217, at 572 (1997). This language, which demonstrates Congress' intent to promote the types of public safety services offered by AAA North Jersey, supports our recommendation that Vogel Bus Company be granted a license on another frequency.

To ensure that the Commission recognized this action by Congress, AAA formally requested that the Commission provide greater protection to the AERS frequencies in its Petition for Reconsideration in PR Docket No. 92-235 (as supplemented on September 5, 1997). In addition, AAA had asked that the Commission refrain from licensing non-auto club entities on the

AERS channels by letter dated November 24, 1997.

In its Public Notice dated October 15, 1997 (DA 97-2208) (Attachment B), the Commission acknowledged that the Balanced Budget Act, specifically Section 3002 (containing Congress' determination that the emergency road services constitute public safety services), may affect proceedings outside of the auction context. AAA North Jersey is exactly the kind of non-commercial organization Congress intended to protect. The Commission should therefore follow Congress' intent and protect AAA North Jersey, and the public, from the harm that would result if incompatible users are allowed to operate on the frequency 150.935 MHz. The August 14, 1998 grant to Vogel Bus Company should be rescinded, and the application returned to pending status for grant on another frequency.

For the above reasons, we ask that the Commission reconsider its decision assigning Vogel Bus Company the frequency 150.935 MHz.

Respectiully submitted,

AAA North Jersey

Tom MacRae
Field Manager - Operations

Attachment

cc: Jerome Conlin
Jerry Walker

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